

### **REMARKS/ARGUMENTS**

This Amendment is responsive to the Final Office Action dated October 20, 2008.

Claims 1-5 and 9-36 were pending in the application with Claims 19-29 being withdrawn from consideration. In the Office Action, Claims 1-5, 9-18 and 30-36 were rejected. In this Amendment, Claims 1-3, 15, 18 and 34 were amended, and Claims 13-14, 32-33 and 35 were cancelled. Claims 1-5, 9-12, 15-18, 30-31, 34 and 36 remain for consideration.

Applicant submits that Claims 1-5, 9-12, 15-18, 30-31, 34 and 36 are in condition for allowance and requests withdrawal of the rejections in light of the following remarks.

#### **A. Interview**

Applicant would like to thank Examiner Cole for her time during the February 18, 2009 interview. During the interview, the Final Rejection was discussed.

#### **B. Claim Rejections Under 35 U.S.C. §112, first paragraph**

Claims 1-5, 9-17 and 30-32 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Specifically, the specification as originally filed does not provide support for the limitation that the adhesion promoter is added to one of the breathable thermoplastic film, coated laminate or the glass fiber substrate (Claim 1), or the polyolefin film (Claim 18).

Claims 1 and 18 have been amended to overcome the above 112 rejection. Accordingly, the 112 rejection is traversed.

**B. Claim Rejections Under 35 U.S.C. §112, second paragraph**

Claims 1-5, 9-17, 30-32 and 34-36 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention.

1. In claims 1 and 2, there is no antecedent basis for the “coated laminate” in line 11.

Claims 1 and 2 have been amended to overcome the 112 rejection. Accordingly, the 112 rejection is traversed.

2. In Claim 34, the term PP is indefinite.

Claim 34 has been amended to overcome the 112 rejection. Accordingly, the 112 rejection is traversed.

3. In Claim 35, the phrase “such as” is indefinite.

Claim 35 has been cancelled. Accordingly, the 112 rejection is moot.

**C. Objection Under 35 U.S.C. § 132(a)**

The amendment filed 7/17/08 was objected to under 36 U.S.C. 132(a) because it introduced new subject matter.

Specifically, the amendment changed 172.2 nanograms per pascal per second per square meter to 17.162 kilograms.

The specification has been amended to overcome the above 132(a) objection. Accordingly, the 132 objection should be removed.

**D. Claim Rejections Under 35 U.S.C. § 103(a)**

1. Claims 1-2, 4-5, 10, 12-14, 17, 18, 30 and 32-33, 36 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone

et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger").

2. Claim 3 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger") as set forth above, and further in view of U.S. Patent No. 4,511,619 to Kuhnel et al. (hereafter "Kuhnel").

3. Claims 11 and 15 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger") as set forth above, and further in view of U.S. Patent No. 6,300,257 to Kirchberger et al. (hereafter "Kirchberger").

4. Claim 16 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger") as set forth above, and further in view of EP 1,245,620.

5. Claims 1-2, 4-5, 10, 12-14, 17, 18, 31 and 34 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George").

6. Claim 3 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George") as set forth above, and further in view of U.S. Patent No. 4,511,619 to Kuhnel et al. (hereafter "Kuhnel").

7. Claims 11 and 15 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George") as set forth above, and further in view of U.S. Patent No. 6,300,257 to Kirchberger et al. (hereafter "Kirchberger").

8. Claim 16 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George") as set forth above, and further in view of EP 1,245,620.

9. Claims 1, 4, 5, 9-15, 32, 34 and 35 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger") as applied to the claims above, and further in view of EP 104555.

Applicant submits that independent Claims 1 and 18 are patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger, George and EP 104555.

As discussed during the February 18<sup>th</sup> interview, Applicant's attorney and the Examiner agreed that the removal of the term coated laminate and the addition of a limitation blending the thermoplastic film with the adhesion improvement component would most likely distinguish the claimed invention over the combination of references.

Applicant therefore has amended claim 1 to the following:

"A non-asphaltic underlayment comprising:

a glass fiber-based substrate in which a first surface thereof is directly adhered to a breathable thermoplastic film having a minimum thickness of 2 mils, the breathable thermoplastic film

selected from the group consisting of a polyurethane based thermoplastic film, an ethylene-methacrylate or ethylene acrylic acid based thermoplastic film, a micro-porous polyolefinic thermoplastic film, a micro-porous polyester thermoplastic film and combinations or multilayers thereof, said breathable thermoplastic film imparts water-resistance to the underlayment while maintaining breathability thereof, the breathable thermoplastic film having a minimum moisture vapor transmission rate of greater than about 3 perms; and

the breathable thermoplastic film further comprising **an adhesion improvement component that is blended with the breathable thermoplastic film** to improve adhesion between the breathable thermoplastic film and the glass fiber-based substrate.” (Emphasis Added).

Claim 18 has similar limitations.

Accordingly, Applicant believes that independent Claims 1 and 18 are patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger, George and EP 104555– taken either alone or in combination.

Claims 2-5, 9-12, 15-17, 30-31, 34 and 36 depend on claim 1. Since Claim 1 is believed to be patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger, George and EP 104555, Claims 2-5, 9-12, 15-17, 30-31, 34 and 36 are believed to be patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger, George and EP 104555 on the basis of their dependency on Claim 1.

### **CONCLUSION**

In view of the aforementioned remarks and amendments, the Applicant believes that each of the pending claims is in condition for allowance. If, upon receipt and review of this amendment, the Examiner believes that the present application is not in condition for allowance and that changes can be suggested which would place the claims in allowable form, the Examiner is respectfully requested to contact Applicant's undersigned counsel at the number provided below.

The Director is hereby authorized to charge any fees that may be associated with this filing or credit any overpayment of same, to Deposit Account No. 03-1250, under Reference No. FDN-2815, Customer No. 43,309.

Respectfully submitted,

Date: February 20, 2009

/Matthew T. Dennehy/  
Matthew T. Dennehy  
Reg. No. 52,811  
Attorney(s) for Applicant  
Sills Cummis & Gross P.C.  
One Rockefeller Plaza  
New York, New York 10020  
Telephone: 212 643-7000  
Facsimile: 212 643-6500